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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

11 DAVID WIT, et al.,

12 Plaintiffs,

13 v.

14 UNITED BEHAVIORAL HEALTH,

15 Defendant.

Case No. 14-cv-02346-JCS
Related Case No. 14-cv-05337-JCS

**REPLY DECLARATION OF SUSAN J.
HARRIMAN IN SUPPORT OF
PLAINTIFFS' REQUEST FOR
ATTORNEYS' FEES**

Judge: Hon. Joseph C. Spero

17 GARY ALEXANDER, et al.,

18 Plaintiffs,

19 v.

20 UNITED BEHAVIORAL HEALTH,

21 Defendant.
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DECLARATION OF SUSAN J. HARRIMAN IN SUPPORT OF REPLY TO ZUCKERMAN'S REQUEST FOR
ATTORNEYS' FEES
Case No. v14-cv-02346-JCS

1 I, Susan J. Harriman, declare and say that:

2 1. I am an attorney licensed to practice law in the State of California and
3 serve as the General Counsel to the law firm of Keker, Van Nest & Peters LLP, where I
4 was a partner from January 1, 1989 until December 31, 2019.

5 2. The law firm of Zuckerman Spaeder LLP (“Zuckerman”) asked me to
6 opine on the reasonableness of the rates that members of Plaintiffs’ trial team charged in
7 the instant litigation. In connection with that request, Zuckerman also asked me to
8 review the declaration of James P. Schratz and to comment on his opinions set forth
9 therein.

10 3. I have reviewed Mr. Schratz’ declaration and disagree with many of his
11 opinions. Mr. Schratz showed limited understanding of how complex, high stakes
12 litigation works, the responsibilities and requirements of all the members of a trial team,
13 and what makes for an effective, persuasive and well-prepared trial presentation. He also
14 does not appear to appreciate that trial practice has changed since the days of paper
15 filings and that all good law firms now have litigation support personnel who specialize
16 in e-discovery, metadata, and related technical tasks necessary for document review and
17 production – tasks that secretaries and clerical persons are not qualified to do. In these
18 days of e-filing and e-discovery, paralegals have developed an expertise in making sure
19 the litigation team is organized, prepared and able to easily access the necessary
20 pleadings or exhibits for all aspects of a complex, document-intensive case, from motions
21 and depositions to trial and appeal. Perhaps in a slip and fall case that Fireman’s Fund
22 might have handled years ago, a secretary could have managed control over the docket
23 and document production, but it would border on malpractice to have someone other than
24 a skilled paralegal or litigation support specialist handling those tasks now. There still
25 are plenty of tasks that are appropriately delegated to secretarial or office services staff
26 for which the client is not billed, but the tasks that Mr. Schratz labels as “clerical” are not
27 in that category.

1 4. Mr. Schratz devotes the lion's share of his declaration to criticizing the
2 work and billing rates for paralegals and litigation support personnel. In my experience
3 in trying large civil cases, it is hard to overstate the importance of having competent
4 litigation paralegals and litigation support personnel as part of the litigation team. Their
5 assistance is invaluable. He also is critical of the fact that plaintiffs are seeking current
6 rates for prior years. That is a legal issue for the Court to decide, and it should not be the
7 opinion of any expert, including me. As for the current rates, he provides no reasoning as
8 to why those rates are unreasonable. He cites to the Real Rate Report, but that table is
9 not focused on the Bay Area, nor does it give any indication of the experience of the
10 paralegals or the sophistication of the practice of the law firms at which the paralegals
11 work. As set forth in my initial declaration at paragraph 11, Zuckerman's rates for its
12 paralegals are well within the customary range for paralegals at comparable law firms in
13 the Bay Area. They correspond closely to the 2020 hourly rates of the paralegals at
14 Kecker, Van Nest & Peters, which ranged from \$290 to \$360 with seven out of 17
15 paralegals being billed at \$360 an hour.

16 5. At Kecker, Van Nest & Peters, we try to have our bills contain sufficient
17 information so that the client understands what he/she/or it is paying for, while avoiding
18 making the review process too daunting or time-consuming. For years, I have served as a
19 Risk Management partner at Kecker, Van Nest & Peters. Every year, I conduct a one-hour
20 class on "Ethics and Billing," and I instruct our new associates on how to bill time to
21 their cases. I stress the importance of accuracy and timeliness in recording their billing
22 entries. I also inform them that it is important to avoid adding too much detail to their
23 billing descriptions.

24 6. Mr. Schratz devotes 22 pages of his declaration to criticizing the time of
25 lead paralegal Lori Duignan. I found no merit in his nitpicking attacks. I list below
26 several examples as to why Ms. Duignan's time is appropriately billed.
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1 a. Mr. Schratz claims that the time entries “review and manage
2 internal docket” and “review and update internal docket” constitute block billing and are
3 clerical tasks. He is wrong on both counts. “Review and manage” or “update internal
4 docket” is a descriptive way to describe a common paralegal task that in turn allows the
5 lawyers to seamlessly do their jobs. In this day of e-filing, the paralegals organize
6 materials that are downloaded from the Court’s docket, and they save them onto an
7 internal work network or a database. Paralegals do these tasks in a manner that requires
8 an understanding of the case and the issues so that the lawyers can access the information
9 when needed. Our clients routinely pay for our paralegals to perform such a task, which
10 is not assigned to a secretary or clerical person. Ms. Duignan’s description of “review
11 and manage internal docket” or “review and update internal docket” accurately describes
12 that task. I understand that task to describe the process of carefully reviewing every
13 filing, knowing the local rules regarding deadlines, calculating and keeping track of
14 deadlines, and ensuring that the firm’s docketing system (i.e. the system for keeping
15 deadlines and sending reminders to the case teams) is accurate and up to date. That
16 critical task is appropriately assigned to experienced paralegals like Ms. Duignan.
17 Further, she lists the amount of time it took to perform the task and does not combine that
18 one task with others; therefore, there is no block billing involved.

19 b. Mr. Schratz also takes issue with the time entry “work on master
20 contact lists”. Again, the entry is specific and not combined with any other task—
21 therefore it’s not block billing. It adequately describes a paralegal’s task, particularly one
22 working for plaintiffs’ class counsel. It is important to keep a chart compiling contact
23 information for the wide range of individuals whom the litigation team may need to
24 contact, including potential plaintiffs’ class members, opposing counsel, clients and
25 courthouse staff, so that the members of the trial team can communicate with those
26 persons.

1 c. Mr. Schratz criticizes approximately 76 billing entries related to
2 document collection (e.g. “attend to collection of documents from potential class
3 members”), which he claims is a clerical task not requiring legal education or experience.
4 In our firm, and likely in any other firm that does high stakes litigation, the collection of
5 documents from clients is always done by either an associate or a paralegal. Proper
6 document collection is mandated by court rules and, if not done properly, is potentially
7 sanctionable. This highly time-consuming task requires a paralegal or associate with the
8 experience, sophistication, and detail orientation to be done properly, thus ensuring that
9 all potentially-relevant materials are collected, preserved, and saved in appropriate
10 places. The documents need to be kept track of and produced if responsive to discovery
11 requests. These are tasks that are appropriately assigned to paralegals, and it is standard
12 law firm practice to bill the tasks conducted by paralegals to clients. Indeed, I would
13 have been concerned if such tasks had been delegated to secretaries or clerical personnel.

14 d. In every case that I have tried, at some point shortly before trial, I
15 always request and receive permission from a client to have every member of the trial
16 team record their time as “Prepare for and attend trial.” While trial is ongoing, every
17 work task during the day is related to the trial. And once in trial, there are so many tasks
18 to do that it would be needlessly time consuming to summarize each and every task and
19 to record time throughout the day. In fact, it is impossible to bill throughout the day
20 since most of the day is spent in the courtroom. I have never had a client complain about
21 such time entries. In this case, the Court is well-positioned to know what days the team
22 was in trial and who was there, and to know how much work preparing for each day of
23 trial required. There are tasks before and after every court day that relate to preparation
24 for trial. In my experience, the attorneys and the paralegals have many late nights during
25 trial. The paralegals, in particular, are responsible for ensuring that the voluminous
26 witness exhibit binders are ready to go, that they contain the correct materials and that
27 there are sufficient copies. Of course, these tasks are more complicated when trial is out
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1 of town and the trial team is working out of hotel rooms. In the days shortly before trial
2 and on weekends during trial, the appropriate time entry is “Prepare for Trial.” This
3 complaint appears to stem from Mr. Schratz’ lack of trial experience.

4 7. Mr. Schratz also criticizes the time entries of paralegal Jay Chen as vague,
5 and I disagree. Mr. Schratz suggests adding detail where none is needed.

6 a. For example, Mr. Schratz takes issue with Mr. Chen’s entry of
7 “assist with preparation of trial exhibits.” In his view, Mr. Chen should have listed the
8 trial exhibit on which he worked and what he actually did to assist. In a case with
9 hundreds, if not thousands, of trial exhibits, that opinion is entirely divorced from reality.
10 In reviewing our bills before they go to the client, I would have deleted the additional
11 information Mr. Schratz proposes. Most clients do not want that level of detail, nor
12 should paralegals be forced to waste their time adding such detail. “Assist with” means
13 doing whatever task is needed to make sure that the job is done properly, efficiently and
14 in a way that makes it useable for the trial team. The time entry as written provides the
15 client with sufficient information to determine if the billing entry is fair and accurate.

16 b. For some inexplicable reason, Mr. Schratz also takes issue with the
17 description “review and index deposition exhibits.” This time entry is not an example of
18 block billing because it constitutes only one task with a reasonable amount of time
19 allocated to it. The entry itself reflects the fact that paralegals are in charge of tracking
20 exhibits marked in deposition, often with the purpose of later preparing an exhibit list for
21 trial and/or sharing deposition exhibits with experts. It is important that the index of
22 deposition exhibits stays up to date, accurate and in a form that members of the trial team
23 can access. The deposition exhibit index often includes background information for each
24 deposition exhibit, such as bates number, deponent, date of the original document exhibit
25 and a short description of the exhibit. Having such a detailed index of deposition exhibits
26 facilitates the taking of further depositions, the process of preparing a list of trial exhibits,
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1 and other trial preparation. The amount of time billed to this task of course depends on
2 the frequency and the number of depositions.

3 8. Mr. Schratz also complains about some time entries of two litigation
4 support personnel. He attacks many of their entries as “clerical”, thereby displaying his
5 own lack of understanding as to the invaluable role played these days by litigation
6 support personnel. Clerical personnel are not qualified to get involved in e-discovery,
7 nor do they understand metadata or have the certifications and technical training
8 necessary to conduct these tasks. I found none of Mr. Nascher’s time to be clerical. Mr.
9 Schmidt’s time also is appropriately billed, and he adequately described what he did and
10 how long he spent doing that task. He has several time entries of “trial support” which is
11 a typical time entry for a litigation support person helping the trial team with set up and
12 presentation of evidence. I also understand that Mr. Schmidt served multiple roles during
13 trial, not only serving in his litigation support capacity, but also pitching in as a full-time
14 trial paralegal and providing critical computer assistance to the trial team, all of whom
15 were working in makeshift workspaces in hotel rooms.

16 9. Mr. Schratz opines that “[s]ome strategic conferencing among attorneys
17 does have value, but not when done to excess.” Perhaps we disagree merely over the
18 phrase “to excess” but conferences among trial team members enrich a law firm’s work
19 product. The pandemic has proven how invaluable it is to conduct informal, in-person
20 conferences so that we may gain further support for our opinions and give clients the
21 benefit of a reasoned, well-discussed strategy. For several years now, in nearly all of our
22 cases at Kecker, Van Nest & Peters, we have weekly team meetings of the entire case team
23 so that key information flows to all team members. Those in-person meetings also ensure
24 that the task list is up to date and that people are timely doing the work that needs to be
25 done. They keep all members of the team, including paralegals and young associates, on
26 the same page—with each person well aware of the overall strategic decisions in the case.
27 That way, every team member has a vested interest in helping the team reach those goals
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1 and the information necessary to do so. They allow attorneys to prepare witnesses for
2 either deposition or trial, knowing all the key themes of the case. It is also important that
3 the members of any particular team feel free to discuss ideas with each other. It is always
4 helpful to bounce an idea off another trial member—whether two paralegals are talking
5 together or two associates or a partner with anyone else on the trial team. Educated
6 clients, who are well sophisticated in the practice of law, welcome these types of
7 interactions among their trial team. Mr. Schratz complains that approximately 2.2% of
8 the fees billed by the timekeepers related to or involve conferencing. I find that
9 percentage to be minor and far from excessive.

10 10. Mr. Schratz targets Zuckerman’s co-counsel to claim that their billing
11 rates are excessive. For the reasons set forth in my opening Declaration at paragraph 9, I
12 disagree and find both Mr. Bendat’s and Mr. Maul’s hourly rates to be reasonable and
13 well in line with the rates charged in the Bay Area legal community by lawyers of
14 reasonably comparable skill and expertise. And for the reasons set forth above in
15 Paragraph 9, I believe that the time spent in conferences by Mr. Maul and Mr. Bendat are
16 appropriate.

17 11. I have reviewed the list of entries that Mr. Schatz claims are vague, a list
18 of which is set forth in paragraph 164 of his declaration. I disagree. Each and every
19 entry provides sufficient detail for the client to understand for what he/she/it is paying.

20 12. Mr. Schratz also complains about excessive research by partners, again
21 displaying his lack of understanding about how certain law firms are run. Legal research
22 is a legal skill shared by all lawyers, not just associates. In our firm, and, I believe, in the
23 Zuckerman firm, once work begins on a case, there is a concerted effort not to add new
24 bodies to the case team unless necessary. Clients appreciate the consistency of keeping a
25 case team intact without unfamiliar names on a bill. We also strive to share the work.
26 On my case teams, we discuss who is going to do a particular task. It is common for me
27 to ask another partner (or for a partner to offer) to do legal research for several reasons.

1 First, the partner might already be familiar with the law and will be able to conduct the
2 research more quickly and efficiently. Second, the partner may have more time than an
3 associate. We all have more than a few cases on which we work. If an associate is busy
4 on another case, it is far better to ask another team member to do research than to bring in
5 someone unfamiliar with the case. Moreover, while editing briefs, partners frequently do
6 legal research to confirm that cases are being fairly presented or to track down additional
7 authority. Our billing rates reflect our experience. Therefore, someone with a higher
8 billing rate and more experience tends to do legal research more efficiently than a
9 younger lawyer. In my opinion, Mr. Schratz' complaint about partners doing legal
10 research has no merit.

11 I declare under penalty of perjury under the laws of the United States that the
12 foregoing is true and correct and that this Declaration was executed on February 14, 2021
13 in Sausalito, California.

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